

University of Nebraska - Lincoln

DigitalCommons@University of Nebraska - Lincoln

---

Court Review: The Journal of the American  
Judges Association

American Judges Association

---

May 2003

## Court Review: Volume 40, Issue 1 - Children as Witnesses: What We Hear Them Say May Not Be What They Mean

David B. Battin  
*Cornell University*

Stephan J. Ceci  
*Cornell University*

Follow this and additional works at: <https://digitalcommons.unl.edu/ajacourtreview>



Part of the [Jurisprudence Commons](#)

---

Battin, David B. and Ceci, Stephan J., "Court Review: Volume 40, Issue 1 - Children as Witnesses: What We Hear Them Say May Not Be What They Mean" (2003). *Court Review: The Journal of the American Judges Association*. 110.

<https://digitalcommons.unl.edu/ajacourtreview/110>

This Article is brought to you for free and open access by the American Judges Association at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Court Review: The Journal of the American Judges Association by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

# Children as Witnesses:

## What We Hear Them Say May Not Be What They Mean

David B. Battin & Stephen J. Ceci

Children present a special challenge when they become participants in the legal system. Jean Piaget said that the work of a child is to play. That is the basis for most interactions between children and adults. The child plays and the consequences of that play are unimportant to adult affairs—that is, unless the child is under the age of 6 or 7 and is required to serve as a witness. In that situation the consequences of what the child says or chooses not to say can be truly significant.

The special challenge for adults hearing the child's testimony is to accurately infer what the child means from the words that are used. Entertaining the possibility that the child could intend to convey a meaning different from—and even opposite to—what a legally trained listener would mean using the same words is crucial to maximizing the value of the child's testimony.

The child witness presents a double bind for those conducting a forensic interview. Young children produce a higher percentage of accurate and relevant information in a free recall situation in which they are merely asked to tell in their words everything they remember, without prompts, cues, or suggestions. However, preschoolers produce little or no information when simply asked to "tell us what you remember." The aggravation of this situation stems from the demonstrated inability of these very young children to use questions posed to them as clues to what additional information is needed.

In a recent experimental investigation of children's reports of a wrongful act they had seen on videotape, most children aged 3 to 10 years made a first reference to the perpetrator, who acted alone, as "they." In adult usage, "they" almost always indicates more than one person. The older children in this study were able to refine their reference in response to directive questions such as, "Do you know which person did it?," but a signif-

icant number of preschoolers never made a singular reference.

Most interrogative experiences that children have outside the legal system are not carefully evaluated for consistency or truth value. The adult who asks questions such as "What happened at daycare today?" or "What did you do at Molly's birthday party?" have a "script" in mind of what occurs during the typical event (e.g., a typical birthday party or a typical day at nursery school). Anything the child says that fits the script goes unchallenged. It is usually not important to the adult questioner whether the child played with Legos today or on some other day, or whether the child played with Legos himself or watched a peer play with them.

Courtroom communication differs from everyday conversation in that it is designed to promote shared context to a very high degree. The codes and statutes are available for everyone to read. Evidence is shared through discovery. Jurisprudence is an unusual venue that employs the same language (i.e., semantics, syntax, and pragmatics) that is used for other communication but often defines terms differently and provides exact and special meaning to words in the general lexicon. This prescribed and delimited mutual context facilitates the process for those with access to it.

This is precisely why communication between those trained in the law and those without legal training can go awry. Recognizing that even non-indoctrinated adults have a high degree of variability in their success with this system, children are at a profound disadvantage. They not only lack this specialized knowledge, but they lack substantial general knowledge of the world and certain language skills we expect in adults. They are less likely to admit they don't understand a question, to correct an adult if the child's answer is misinterpreted, or to admit they don't know the answer to a question.

Perhaps the most obvious way that

communication can break down with children is in semantics or word meaning. If a child is asked, "What color jacket was the lady wearing?," and she answers, "Blue," without hesitation, then it is easy to accept that answer at face value. Most three- and four-year-olds know the names of all the primary colors, but the percentage of those children who can accurately match a color name to its corresponding hue increases dramatically between 36 months and 60 months.

Prepositions such as *above*, *below*, *behind*, *in front of*, *on*, *before*, and *after* are familiar to three- and four-year-olds, but a significant percentage of these children confuse the physical or temporal relationship represented by these words. Prepositions such as *on*, *with*, and *to* have multiple meanings, some of which are acquired years before others. For example, the sense of *on* that locates an object in space ("The book is on the table.") is acquired prior to the sense of *on* that shows connections or relations between things ("Did he have on his pajamas?"). In turn, both these senses of the preposition are acquired years before the sense that carries the meaning of an agent or action ("Show me on the doll how he touched you."). The risk for a forensic interviewer is to assume that the child understands a question with a given word because the word, although in her vocabulary, is not understood in the way the interviewer employs it.

When it comes to temporal terms, the situation is even dodgier. A child might assent to the question, "Did that happen before your birthday?" when the child's birthday is in July. Yet, the same child might subsequently answer the question, "Tell us again when that happened?" with, "In August." For many three- and four-year-olds this couplet of answers would not present a contradiction.

These examples illustrate the critical bind encountered by those interviewing young children. There is extensive scientific evidence that children provide the

most accurate information in a free recall situation in which they are asked to tell what they know about a situation without additional prompting from the interviewer. Unfortunately, most young children do not provide sufficient details about events to allow a naïve listener to reconstruct the episode. This is true even in experimental situations that have been designed to present the child with a relatively simple scenario, people with highly salient physical characteristics, and a single salient event.

Presented with claims such as, "They did something bad," the interviewer is compelled to resort to directive questions to find out what was done and who did it. As the interview proceeds and the child asserts, "The lady did it," directive questions with fewer options for response need to be presented. If, in response to the question, "Do you know what the lady was wearing?," the child says, "A coat," the stage has been set for the color question, which the child recognizes requires a single-word answer with a finite set of options.

This bind becomes a double bind when the witness is only three or four years old. These children will predictably provide the least information in free recall—in our work, many often produce no information at all. In addition, there is a body of converging evidence that these very young children lack the pragmatic skill to use the interviewer's questions as evidence that they need to supply more information. In the study mentioned earlier, three- and four-year-olds produced response patterns during interviews that indicated they were not responding to directive questions at all. After asserting, "They did it," successive questions about who "did it" were responded to with "the people," "they," "those guys," etc. Some of these children eventually identified "they" as either a solo man or a woman, illustrating the

very real risk that young preschoolers will use a plural pronoun even though they know an individual person is responsible. Interestingly, very few of the children in our study initially used clothing or other physical characteristics to identify a singular definite reference (e.g., the man with the white shirt). One can imagine the suspicions of a forensic interviewer when a child witness asserts that a crime was perpetrated by "they" rather than "he"—a barrage of follow-up questions to elicit possible unindicted perpetrators. Yet, it is a common characteristic of preschoolers to mislabel singular perpetrators with a plural noun or pronoun.

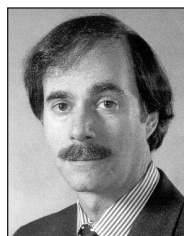
Transcripts of depositions and in-court testimony include copious examples of exchanges in which children fail to recognize potential ambiguity. For instance, children often answer embedded questions such as, "Did you or did you not...?" with "Yes" or "No." Children try to answer the questions that are posed to them, even when they are not precisely sure what information is being requested. In such situations, the miscommunication problem can be masked by the adult assumption that what people say is going to be relevant. Most conversational responses could be interpreted in a variety of ways if they were context free. The success of communication requires that we interpret what is said as if it is relevant in the present discourse context. If the context of very young children is characteristically divergent from the adult context, that interpretation may be in error.

The key to anticipating the problems in adult-child communication is to recognize that the child's perspective is vastly different from that of an adult. They have less knowledge of the world, alternative meanings for common words, different responses to unknown versus powerful people, less ability to reconstruct past events *in situ*, and highly differential

approaches to using what is said to them to evaluate what their discourse participant knows or does not know. Most children want to cooperate with an interviewer and will do their best to answer the questions posed to them, with or without understanding their import. It seems incumbent on those charged with the task of taking a statement from a young child to be aware of these tendencies and to seek expert guidance in structuring their interview.



*David B. Battin is a doctoral candidate in human development at Cornell University. His research focuses on the behavior of preschool-age children engaged in discourse with an unfamiliar adult. He has coauthored manuscripts dealing with more general issues of children's testimony and served as a student reviewer for a peer-reviewed journal.*



*Stephen J. Ceci is the Helen L. Carr Professor of Developmental Psychology at Cornell University. He co-authored (with Maggie Bruck) the 1995 book, *Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony*, which won the prestigious William James Book Prize awarded by the American Psychological Association. Ceci's many honors include an NIH Research Career Scientist award and a Senior Fullbright-Hayes fellowship. He is the author of more than 300 articles, chapters, and books, mostly in the area of child intellectual development. Ceci serves on the editorial board of several scholarly journals.*